the prosecution nor was there any evidence before the learned Magistrate to give so much as a hint that the accused would break the terms of their bail bonds. The two accused were lawfully on bail and their detention on remand therefore was altogether wrong and illegal. In ordering the detention of the accused in the circumstances of this case the learned Magistrate was treading over dangerous ground and making herself liable to prosecution under section 342 of the Penal Code in addition to an action for damages for wrongful confinement.

In the course of his submission before me Mr. Vincent Paul Raj for the accused cited the case of *Public Prosecutor* v. *Tanggaah (No. 2).*[1] He said he had also referred to this case when he was before the learned Magistrate earlier in the morning. In that case Sharma J. in dealing with a somewhat similar problem held that "there is no undertaking in the prescribed bond that the bailor is bound to attend the court himself personally or to produce the accused in court on each day of the hearing". This was a decision of a superior court and the learned Magistrate ought to have felt bound by it.

In the exercise of my revisionary powers I set aside the order of remand and direct that the two accused be released forthwith.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.*

CHARLES GRENIER SDN. BHD. v. TIENG HEE & SONS SDN. BHD.

[A.C.J. (Ajaib Singh J.) March 28, 1979]
[Seremban — Civil Appeal No. 5 of 1978]

Landlord and Tenant — Claim for possession — Rent controlled premises — Premises no longer occupied by tenant — Notice to quit — Premises required by owner for his own use — Estoppel — Control of Rent Act, 1966, s. 16(1)(f) & (i) & s. 16(2).

In this case the learned Magistrate had ordered the appellants to give up possession of the premises on the grounds (a) the appellants were no longer in possession of the premises; (b) the respondents required the premises for their own use. The respondent had given a month's notice to quit and subsequently a notice on December 30, 1974 requiring the appellants to quit by the end of February 1976 on the ground that they required the premises for their own use. The appellants appealed.

Held: (1) the learned Magistrate was right in holding that the appellants were no more in personal occupation of the premises and that the first notice to quit was valid and therefore the respondents were entitled to recover possession under section 16(1)(i) of the Control of Rent Act;

(2) there was insufficient evidence to infer that a new tenancy had been created after the expiry of the first notice, but, even if it were held that a new tenancy had been created, the learned Magistrate was right in holding that the respondents had proved their claim for recovery under section 16(1)(f) of the Act, in that they required the premises for their own use;

(3) there was no evidence to suggest that the respondents had led the appellants into the belief or expectation that they could remain there for as long as they liked or for a considerable period of time and therefore the plea of estoppel could not succeed.

Case referred to:-

(1) *Loewenthal* v. *Vanhoute* [1947] 1 All E.R. 116.

CIVIL APPEAL.

R.C. Rajasingam for the appellants.

Atma Singh Gill for the respondent.

Cur. Adv. Vult.

Ajaib Singh J.: This is an appeal from the decision of the learned Magistrate ordering the defendants to give vacant possession of premises No. 69 Birch Road to the plaintiffs.

In their statement of claim the plaintiffs averred that they were the owners of the premises concerned and that the defendants were the monthly tenants thereof paying rent at the rate of $68.75 per month. On July 21, 1972 the plaintiffs served a notice on the defendants terminating their tenancy on August 31, 1972. It was alleged that the defendants had gone out of occupation of the premises as from June 30, 1972 but that the defendants had failed to deliver vacant possession of the premises to the plaintiffs. Thereafter the plaintiffs had accepted the monthly rent tendered by the defendants from time to time on a without prejudice basis.

On December 30, 1974 the plaintiffs served another notice to the defendants requiring them to quit the premises by the end of February 1976 on the ground that they required the premises for their own use. The defendants however failed to comply with the second notice after the expiration of the period of twelve months. The plaintiffs alleged further that they were also the registered owners of premises No. 70 Birch Road which were contiguous to the premises in question and that on these premises No. 70 Birch Road they were doing their business of dealers in electrical goods such as radios, television sets, refrigerators, washing machines, water heaters, bicycles, gas cookers, toys, type-writers etc. They alleged that shop No. 70 was crammed with goods and therefore they very badly required premises No. 69 for their own use. The plaintiffs also alleged that the defendants as a limited company were not protected in law as such or alternatively their monthly tenancy had been terminated by a valid notice to quit dated July 21, 1972 or in the further alternative the plaintiffs required the premises for their own use under section 16(1)(j) of the Control of Rent Act, 1966. (Section 16(1)(j) in fact refers to excess rents received from subtenants and on appeal before me Mr. Atma Singh Gill submitted that this was a typing error and it should read as section 16(1)(f). He had brought this error to the notice of the trial Magistrate but no amendment appears to have been formally made in the record).

In their statement of defence the defendants admitted that they were tenants of the plaintiffs and that they had received the notice to quit dated July 21, 1972 but denied that the notice terminated their tenancy. They also denied that they had gone out of occupation of the premises as from June 30, 1972 or at any other time. They averred that they were still in occupation of the premises. They also averred that the premises were controlled premises within the meaning of the Control of Rent Act, 1966. The defendants denied receiving the second notice to quit

dated December 30, 1974 as alleged by the plaintiffs and they denied that such notice (if it was sent) terminated their tenancy. They admitted that they had not quit the premises and that they were still in occupation thereof. The defendants denied the allegation of the plaintiffs in their claim that the plaintiffs were the registered owners of premises No. 70 Birch Road and that they were carrying on their business of dealers in electrical goods and put the plaintiffs to strict proof thereof. The defendants contended that although they were a limited company they were nonetheless protected from eviction by the Control of Rent Act, 1966. They also contended that the court should exercise its discretion in their favour under section 16 of the Control of Rent Act, 1966 on the grounds that the defendants still required the premises for the use of their business, that there was no suitable alternative accommodation available to them, that they had with the knowledge of the plaintiffs incurred sums exceeding $20,000 in renovations and improvements to the premises and that greater hardship would in all the circumstances be caused to the defendants if an order for possession was made than would be caused to the plaintiffs if such an order was refused.

The evidence in the lower court was briefly as follows. Ang Eng Seong (PW1) said that he was the director of the plaintiff company. Premises No. 69 Birch Road belonged to the company. These premises were acquired by the company in 1951 from the then owner Ong Eng Meng the brother of PW1 and the defendants were then the tenants of the premises paying a rent of $68.75 per month. The defendants were dealing in stationery and in the middle of 1972 they closed their business. On July 21, 1972 the plaintiffs issued a notice to the defendants terminating their tenancy. A reply to this notice was received by the plaintiffs on August 2, 1972 and upon receipt of this reply the plaintiffs decided to hold on from taking further action. PW1 said that thereafter the defendants never came back to the shop and the shop still remained closed. The defendants continued to tender the monthly rent and the plaintiffs have been issuing receipts. PW1 said that the plaintiffs did not withdraw the notice dated July 21, 1972 and the receipts issued were without prejudice. On December 30, 1974 another notice was sent to the defendants calling upon them to give up vacant possession of the premises on or before January 31, 1976. This notice was sent by A.R. registered post the receipt of which was acknowledged by the defendants on January 2, 1975. Another letter was sent to the defendants on September 19, 1975 extending the date of giving up vacant possession to February 29, 1976.

PW1 said further that premises No. 70 which was next door to the premises in question also belonged to the plaintiffs where they sold television sets, radios, bicycles and other articles mentioned in their statement of claim. He said that there was not enough space to stock their goods and their object in asking the defendants for vacant possession of premises No. 69 was to enable them to expand their business. PW1 said that premises No. 69 were a double storey building. He said that around 1970 the defendants did renovate the premises but did not know how much it cost them. The plaintiffs did not contribute anything towards the renovation costs.

In cross-examination PW1 said that the first floor of the premises were living quarters for the manager of the shop but no longer occupied by anyone now and that they were locked. The rear portion of downstairs was occupied. He agreed that the renovation of the premises was carried out with the plaintiffs' knowledge. He agreed that the renovations were major and they gave permission for the renovations to be carried out. He said it did not strike him at that time that they would be needing their premises to expand their business. He agreed that the defendants spent a great sum of money in renovations. He also agreed that if the court ordered vacant possession in favour of the plaintiffs then the plaintiffs would have the premises de-controlled. The purpose of decontrolling was to prevent other tenants from coming in and to avoid further troubles.

In re-examination PW1 said that the premises were rented out to the defendants for the purpose of their business and not as living accommodation. He said that when the defendants asked him to sign the plan for renovation of the premises they did not tell him that they were going out of occupation in 1972.

At this stage leave was sought to further cross-examine PW1 and in further cross-examination PW1 agreed that in addition to premises Nos. 69 and 70 they also owned shop No. 71 and all these three shops were side by side along Birch Road. The tenant of premises No. 71 was Kong Song Chee who became the tenant of the premises at the same time as defendants became tenants of No. 69. The rent now paid by Kong Song Chee was $260 per month and this rent was in force some time from 1975 — 1976. Prior to this the rent on premises No. 71 was $130 per month. The plaintiffs had premises No. 71 decontrolled and the rent was raised to $260 per month and the present tenancy was on a month to month basis. PW1 said that he could now terminate the tenancy of No. 71 by giving the tenant one month's notice. He said that it was not easy to get the tenant of premises No. 71 to quit the premises because there were many other subtenants in the premises.

In further re-examination PW1 said that there were at least 8 subtenants in premises No. 71. In answer to the court PW1 said that No. 71 was also a shophouse one portion of which was occupied by a watch dealer, another portion by a radio repairer and the rear portion by a tailor. He said that the chief tenant was not doing any business but was staying on the premises.

Barry Humphery Gauz (DW1) said that he was a director of the defendant company and lived in Ipoh. He said that the defendant company came into occupation of premises No. 69 Birch Road some time in 1930. When they went into occupation of the premises the ground floor of the premises was used for business and the top floor as dwelling premises and until today the premises were used for the same purposes. Their head office was in Ipoh and they had their printing department in Petaling Jaya. They also did printing works in Ipoh. Besides printing they also did retail business in stationery, books, printed materials and items they manufactured. DW1 said that since they started business there had been no change

in their business except that they had converted from retailing to solely printing. They now concentrated more on printing. In Petaling Jaya it was purely printing and by converting solely into printing they incurred extra expenditure. Over the years their company had spent more than a million dollars on this. DW1 produced annual returns for the years 1971 — 1975 (Exhibits D8A to E). DW1 said that he could not recall the exact figures spent on each branch. However expenses were concentrated only in Petaling Jaya and Ipoh. Money was spent on purchase of machinery and expansion of building at Petaling Jaya. DW1 said that they did not do any printing in Seremban and they also stopped doing retail business in Seremban since 1972. DW1 said that although they had stopped doing retail business in Seremban since 1972 they still retained the top floor of premises in question as domestic premises for the company's sales representatives whenever they visited the Seremban area. The company still had clients in Seremban and south of Kuala Lumpur whom they still served. DW1 produced water bills for the premises for the period 1972 — 1976 (Exhibit D9) electricity bills for the period July to December 1976 (Exhibit D10) and conservancy bills for the period December 1972 to August 1976 (Exhibit D11). DW1 said that the premises were still kept in good living condition usable at any time by members of his company. The first floor of the building had always remained as living accommodation.

DW1 said that in 1969 the defendants carried out renovations to the whole building and they installed modern sanitation for the benefit of their employees staying upstairs. They spent about $25,000 for the renovations of the premises in 1969 and the plan was signed by the landlord when it was submitted to the authorities for approval. DW1 said that the landlord did not tell them not to renovate the premises and they therefore believed that they could stay in the premises as long as they liked. He said that they required the premises for their business and they intended to do printing which required a lot of money. They did not do printing in Seremban because they were concentrating on expansion of their business in Ipoh and Petaling Jaya. He said they had now funds to start printing work in Seremban.

In cross-examination DW1 said that their former head office was at No. 8 Medan Pasar, Kuala Lumpur but now their head office was in Ipoh. He said the Ipoh premises belonged to the company. Their former Kuala Lumpur premises No. 8 Medan Pasar did not belong to them and they had rented the premises. They ceased to be tenants of these premises in Kuala Lumpur in February 1977 and handed over possession to the owners. No. 8 Medan Pasar was a pre-war building and therefore rent-controlled. It was a double storey building and both floors were used for printing and retail business but not for domestic purpose. They stopped their printing work at No. 8 Medan Pasar some time in 1960 and moved to Petaling Jaya. The premises at Petaling Jaya belonged to the company where they did only printing work and no retail business. DW1 said that when the company vacated premises No. 8 Medan Pasar they were paid a compensation of $15,000 by the landlord of the premises. (Mr. Rajasingam for the appellants informed the court during his submission on appeal that the figure was a typing error — it should read $125,000 and not $15,000).

DW1 said that from 1972 to 1975 the defendant company was interested in expanding their business and he agreed that the plaintiffs were equally interested in expanding their business. He agreed that the defendants' business was now concentrated solely on printing and doing wholesale business of printing products. He said that their salesmen were centrally based in Petaling Jaya covering south and Ipoh covering north. He said the salesmen travelled south once or twice a month and the company was not obliged to provide accommodation to their salesmen when they travelled. The defendants had a few clients in Negeri Sembilan. DW1 said that the rear portion of the premises was now occupied by one Madam Tan who paid a rent of $20 per month for a room at the rear portion.

DW1 agreed that before 1972 the company had a telephone in the premises but this was returned to the Telecoms soon after the defendants stopped doing business at the premises. He said that he could not produce bills in respect of water and electricity for the years 1974 and 1975 as the files concerned had been misplaced and it was quite possible that the bills for 1976 and 1977 had been paid by the subtenant. He agreed that bills for years 1974 and 1975 could also have been paid by the subtenant. He said that it was also quite possible that the electricity bills for the years 1972 — 1976 were also paid by the subtenant. DW1 said that he could not say for certain that their salesmen made use of the top floor of the premises whenever they came to Seremban but they had been specifically told to do so. He said further that between 1972 and now he had visited the premises only once which was about two or three weeks ago and he said that the condition of the premises was still reasonably good. Another director who was no longer with them used to visit the premises to check the show-case and furniture.

DW1 said further that when they sought permission of the plaintiffs to renovate the premises they did not tell the plaintiffs that they were going to stop the business in 1972. He said he himself did not anticipate that they would close their business in 1972. They intended to re-start the business earlier but due to their expansion programme there had been a delay. There was no point in putting machinery into the premises and then leave the premises. He agreed that for installing printing machinery they had to get the approval of the Machinery Department and perhaps also of the Town Council and that the plans would need to be signed by the plaintiffs. He said that if the plaintiffs refused to sign the plans the defendants could not do anything about it. He disagreed that the defendants had no intention to re-start their business in Seremban.

In re-examination DW1 said that their printing work in Petaling Jaya was in full capacity now. The printing work performed at Medan Pasar consisted of commercial printing such as letter heads, bill forms etc. The main portion of their printing at Petaling Jaya was label printing, printing of magazines and periodicals, bookwork and diaries. There were different types of machines for different types of work. He said that the defendants had sufficient capacity

now to work outside Kuala Lumpur and if they were to start printing in Seremban they would not be doing the same type of printing as in Petaling Jaya. This was because Seremban would not be suitable for printing of letter heads etc. He said besides Seremban they could also do such work at Ipoh. Their Ipoh printing office was not fully occupied but because of the distance it would be more economical to have a printing office in Seremban.

On the evidence before him the learned Magistrate found in favour of the plaintiffs and ordered the defendants to give up vacant possession of the premises to the plaintiffs on or before September 30, 1977. He also ordered the defendants to pay to the plaintiffs mesne profits at the rate of $137.50 from March 1, 1976 to date of delivery of vacant possession less sums paid by the defendants and accepted by the plaintiffs during this period. The learned Magistrate made no order as to costs of the action.

In his grounds of judgment the learned Magistrate appears to have decided this case on two grounds namely that the defendants were no longer in occupation of the premises thereby entitling the plaintiffs to claim possession of the premises under section 16(1)(i) of the Control of Rent Act, 1966, secondly that the plaintiffs required the premises to expand their own business under section 16(1)(f) of the Act. In arriving at his decision on these two points the learned Magistrate was first of all satisfied that the defendants were tenants within the meaning of that term and that they were therefore protected tenants. He then held that only the first two notices merited consideration and the third notice was apparently sent by mistake due to a wrong computation of time and therefore redundant. He held that the validity or otherwise of the first notice was of no importance because even assuming that the first notice was invalid and a new tenancy created there was nothing to prevent the plaintiffs from determining the tenancy again by issuing a fresh notice. He said that a claim under section 16(1)(f) of the Control of Rent Act required twelve months' notice to determine the tenancy while a claim under other paragraphs of section 16(1) required only a minimum of one month's notice but he said that there was nothing wrong if a landlord decided to give a longer notice than the minimum statutory period required. He therefore held that the second notice was valid either for a claim under paragraph (i) or (f) of section 16(1) of the Act.

The learned Magistrate then went on to discuss the provisions of section 16(1)(i) and came to the conclusion that occasional visits by the defendants' salesmen to the premises did not constitute personal occupation of the premises. He also held that the defendants were no longer doing any business or trade after they had closed their shop in 1972. They were therefore not protected under section 16(2) of the Control of Rent Act. The learned Magistrate also held on the evidence before him that the plaintiffs required the premises for the purpose of expanding their business and held that the plaintiffs were entitled to possession of premises under this heading as well. On the defendants' plea of doctrine of equitable estoppel the learned Magistrate quoting from the authorities said —

> "Doctrine of equitable estoppel applies only when the tenant has been led to expend money on the land or property under an expectation created or encouraged by the landlord that the tenant will as a result of that expenditure be able to remain there."

The learned Magistrate held that there was no evidence in this case to suggest that the renovation to the premises was carried out as a result of any expectation created or encouragement given by the plaintiffs. On the contrary DW1 had admitted under cross-examination that the renovation was carried out at the defendants' own free will and accord. Hence the doctrine of equitable estoppel did not apply in this case. In the event the learned Magistrate gave judgment for the plaintiffs.

The defendants appealed against the decision of the learned Magistrate. Their memorandum of appeal was as follows —

1. The failure on the part of the learned Magistrate to make a finding that the first notice dated July 21, 1972 issued by the plaintiffs to the defendants is invalid.

2. The learned Magistrate misdirected himself in finding that the second notice dated December 30, 1974 and issued exactly 2 years and 4 months after the expiry of the first notice is a valid notice either for a claim under paragraph (i) or (f) of section 16(1) of the Control of Rent Act, 1966 when in effect the third notice dated September 19, 1975 is an admission on the part of the plaintiffs that the second notice is bad.

3. The learned Magistrate erred in failing to have regard to the fact that there was an unreasonable lapse of 9 months between the issue of the second notice and the issue of the third notice.

4. Having regard to the evidence adduced by the plaintiffs the learned Magistrate misdirected himself in holding that the plaintiffs had proved that their business had expanded and required the premises No. 69 Birch Road, Seremban for their own use.

5. Having regard to the evidence adduced by the plaintiffs and the defendants the learned Magistrate misdirected himself in holding that the frequency of use of the premises No. 69 Birch Road, Seremban is immaterial.

6. The finding by the learned Magistrate that the defendants do not require the premises No. 69 Birch Road for their own use or are no longer in occupation of the premises No. 69 Birch Road is against the weight of the evidence.

7. The finding by the learned Magistrate that the defendants' remaining on the premises No. 69 Birch Road because they wanted "coffee money" from the plaintiffs is unsubstantiated by any evidence.

8. The learned Magistrate having made a finding that the defendants had expended a sum of $20,000 with the knowledge and consent of the plaintiffs misdirected himself on the law relating to the doctrine of estoppel.

9. The learned Magistrate erred in law in finding that what the plaintiffs intended to do with their property or which premises they preferred is not the concern of the defendants and this finding is against section 16(1)(f) of the Control of Rent Act, 1966.

10. The failure on the part of the learned Magistrate to have regard to the fact that the plaintiffs having had premises No. 71 Birch Road, Seremban de-controlled and rented out at a higher rental and these premises were available to the plaintiffs on one (1) month's notice.

11. The official appeal record shows that the plaintiffs are relying on section 16(1)(j) of the Control of Rent Act, 1966 but the plaintiffs are instead relying on section 16(1)(f) of the said Act.

Mr. Rajasingam for the appellants made a lengthy submission on appeal. Leaving aside some irrelevant matters I would group the submission under four parts. First that the two notices to quit were invalid, secondly that the learned Magistrate had erred in holding that no member of the appellant company was living in the premises and that in this respect the respondents had not in fact prayed for an order under section 16(1)(i) of the Control of Rent Act, 1966, thirdly that there was no evidence to hold that the respondents' business had expanded and that they required the premises for their own use and fourthly that the doctrine of equitable estoppel applied in this case.

After perusing the appeal record and giving due consideration to the submissions advanced on behalf of the parties I have decided against allowing the appeal. I agree with the learned Magistrate's decision ordering the defendants to give up possession of the premises to the plaintiffs.

The notice to quit dated July 21, 1972 was valid and effective to determine the tenancy. The learned Magistrate was quite right in coming to the conclusion that neither the defendants as tenants nor any member of the defendants' family were personally in occupation of the premises and therefore the plaintiffs were entitled to recover the premises under section 16(1)(i) of the Control of Rent Act. Mr. Rajasingam submitted that there was no evidence that the premises were business premises. I am afraid I cannot agree. A careful perusal of the appeal record discloses that there was sufficient evidence to prove that the premises were indeed let out as business premises and not as domestic premises. The premises were used mainly as business premises. The fact that the first floor was used as living accommodation did not alter the nature of the original letting which according to the evidence of PW1 was as a business premises.

Under section 16(2) of the Control of Rent Act the premises being business premises the defendants as the tenants or any member of their family would be deemed to have occupied the premises for the purpose of section 16(1)(i) so long as they used the premises for their trade or business notwithstanding that the defendants or any member of their family did not reside therein. The evidence in this case was that the defendants had ceased to do business from about the middle of 1972 and even now until the present day they had not started to do any business in the premises. The premises were locked up and apart from a subtenant who lived in the rear portion of the ground floor no one from the defendant company lived there. According to the evidence of DW1 the defendants never did any printing work in Seremban and even their retail business ceased in 1972 and they returned their telephone to the Telecoms Department soon after they stopped business at the premises. DW1 said however that the defendants had the intention to commence their business. On this evidence the learned Magistrate was quite right in holding that the defendants were no more in personal occupation of the premises — the occasional visits over the years by their salesmen were insufficient to constitute personal occupation within the meaning of section 16(1)(i) of the Control of Rent Act.

There was in fact insufficient evidence to establish that the defendants' salesmen had used the premises as living accommodation after the defendants had ceased their business in Seremban in 1972. DW1 said in evidence that the salesmen travelled south once or twice a month but the defendants were not obliged to provide them with accommodation when they travelled. He could not say for certain that the salesmen used the top floor of the premises whenever they came to Seremban but they had been specifically told to do so. No salesman however was called to give evidence in support.

In the statement of claim the plaintiffs had not stated in very clear terms that they claimed under section 16(1)(i) of the Control of Rent Act. However they did aver in the statement of claim that the defendants were no longer occupying the premises as from June 30, 1972. The defendants in turn had in their statement of defence denied that they had gone out of possession as from June 30, 1972 or at any other time and they contended that they were still in occupation of the premises. The defendants were thus in no way misled in putting up their defence for they knew perfectly well the allegations which they had to meet in their defence.

The second notice to quit dated December 30, 1974 cannot be taken as a waiver of the first notice to quit. And this second notice itself would be ineffective for any purpose unless there was evidence to infer that after the expiry of the first notice a new tenancy had been created. (See *Loewenthal* v. *Vanhoute*[1]). The learned Magistrate did not consider this aspect of the law but I think there was insufficient evidence to infer that a new tenancy had been created after the expiry of the first notice so that the plaintiff's claim remains proved only under section 16(1)(i) of the Control of Rent Act. However if it were to be held that a new tenancy had been created then I would agree with the learned Magistrate that the plaintiffs had proved their claim for recovery of the premises under section 16(1)(f) of the Control of Rent Act, 1966 which reads as follows:—

"(f) where the owner of the controlled premises reasonably requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust, and —

(i) there has been no change by purchase in the ownership of the premises since the fifteenth day of February, 1942; or

(ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice:

Provided that an order or judgment shall not be made or given on any ground specified in this paragraph if the court is satisfied that, having regard to all the circumstances of the

case, including the question whether other accommodation is available for the owner or the tenant, greater hardship would be caused by granting an order or judgment than by refusing to grant it:

Provided further that in the case of a controlled premises being used by the tenant for business, trade or professional purposes an order or judgment shall not be made or given on any grounds specified in this paragraph unless the court is satisfied that the owner requires them for the purpose of carrying on his own business, trade or profession;"

The statement of claim shows that instead of section 16(1)(f) the plaintiffs had prayed for an order under section 16(1)(j) which relates to the receipt of excess rent from subtenants. As was pointed out by Mr. Atma Singh Gill for the plaintiffs this was clearly a typing error. The pleadings as well as the evidence adduced in the case on this particular point related to section 16(1)(f) and not section 16(1)(j). Here again the defendants were in no way misled or prejudiced as they had averred fully in their statement of defence on section 16(1)(f) and the evidence and submissions all centred around the same sub-section.

So on the third part of Mr. Rajasingam's submission I would say that there was sufficient evidence adduced by the plaintiffs that the premises were reasonably required by them for their own occupation, that the tenancy had been lawfully determined by not less than one year's notice to quit and that there had been no change by purchase in the ownership of the premises within one year next preceding the date of the notice. Under the first proviso in section 16(1)(f) of the Control of Rent Act the onus was on the defendants to satisfy the court that having regard to all the circumstances of the case, including the question whether other accommodation was available for the plaintiffs or the defendants, greater hardship would be caused by granting an order for the recovery of the premises than by refusing to grant the order. The learned Magistrate made no specific finding on the first proviso but merely said that the question of greater hardship or alternative accommodation did not arise in this case because the defendants were no longer in occupation of the premises. The inference which one may draw from this statement is that the learned Magistrate found no evidence in favour of the plaintiffs in discharging the onus which was on them under the first proviso. For my part I would say that there was insufficient evidence to satisfy the court that the defendants would suffer greater hardship if judgment for possession of the premises was entered against them than by refusing it.

It is true that the plaintiffs owned another premises No. 71 which were let out to a tenant and which they could take over for their own use although there was evidence that there were several subtenants in these premises No. 71 and it was not going to be easy for the plaintiffs to recover the premises. Against this however there was the evidence of DW1 that besides Seremban the defendants could do printing work in Ipoh because their Ipoh office was not fully occupied. The reason they gave for wanting to do their printing work in Seremban rather than in Ipoh was that it would be more economical to operate in Seremban because of the distance involved. It is difficult to appreciate the logic of this reason bearing in mind that their head office itself was in Ipoh having ready facilities for printing work to be done there. On the other hand the defendants would encounter some difficulty in getting started in Seremban. They would first of all have to get the approval of the Machinery Department and the Town Council before starting any printing work. And in addition they would have to get the approval of the plaintiffs as landlords of the premises. Also it is significant to note that even as the hearing was going on in this case in the lower court the defendants were giving up their tenancy of premises No. 8 Medan Pasar in Kuala Lumpur in February 1977 for which they received a compensation of $125,000. They could well have kept these premises to expand their business without having to worry about any distance involved.

Under the second proviso in section 16(1)(f) of the Control of Rent Act the onus was on the plaintiffs to satisfy the court that they required the premises for the purpose of carrying on their own business. This had been amply proved. Their shop at No. 70 was getting overcrowded with goods and they required premises No. 69 for the purpose of expanding their business.

On the last point regarding the doctrine of estoppel I again agree with the learned Magistrate that there was insufficient evidence to bring this doctrine into operation in favour of the defendants. There was no evidence to reach any conclusion that the plaintiffs had led the defendants into the belief or expectation that upon their expending money on the renovations to the premises they could remain there for as long as they liked or for a considerable length of time In fact they had continued to occupy the premises for about three years after the renovations were done and would have continued to do so if not for the cessation of their business. Apart from a somewhat uncertain intention on their part to start their business again the defendants had done nothing even until now — about seven years after closing shop — to show that they were about to carry out their intention.

In the circumstances I am of the view that there are no merits in this appeal and I accordingly dismiss it with costs.

Appeal dismissed.

Solicitors: *Lewis & Co.; Gill & Tang.*

LEISURE & ALLIED INDUSTRIES PTY. LTD. v. UDARIA SDN. BHD.

[O.C.J. (Salleh Abas F.J.) April 4, 1979]

[Kuala Lumpur — Civil Suit No. 1266 of 1975]

Practice and Procedure — Application for judgment — Affidavits in support — Application to cross-examine witnesses — Discretion of the court — R.S.C. O. 32 r. 6.

In this case the plaintiff claimed the sum of $9,688.28 which he alleged he incurred in connection with the temporary untraceability of a certain equipment. He applied for judgment under Order 32 Rule 6 on the ground of an admission made by the defendant's solicitor. The application was supported by affidavits sworn by witnesses. The defendant challenged the truth of the affidavits and applied to have the defendants cross-examined.

Held: there was just cause in this case for requiring the defendants to be cross-examined and in the exercise of its dis-